

EXHIBIT C

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DOUGLAS E. MCKINLEY, JR.
Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

The Honorable Alan A. McDonald

RECEIVED

JUN 26 2004

Randy Gainer

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 24 2004

JAMES R. ARSEN, CLERK
YAKIMA, WASHINGTON DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR.,
an individual residing in
Benton County, Washington.

) NO. CV-04-5003-AAM

Plaintiff,) FIRST AMENDED COMPLAINT
vs.)

COMMONWEALTH MARKETING)
GROUP, INC.,)
a Pennsylvania Corporation)

Defendant.)

TO: CLERK OF COURT

AND TO: Randy Gainer
Davis Wright Tremaine LLP
2600 Century Square – 1501 Fourth Avenue
Seattle, Washington 98101-1688

COMES NOW, plaintiff, James S. Gordon, Jr., and brings this FIRST AMENDED
COMPLAINT against defendant named herein. Plaintiff alleges the following on
information and belief:

1. PARTIES

FIRST AMENDED COMPLAINT

DOUGLAS E. MCKINLEY, JR.
Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

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30

1 1.1 Plaintiff James S. Gordon, Jr. is and was a resident of Benton County,
 2 Washington during the time of all acts complained of herein.
 3 1.2 Defendant Commonwealth Marketing Group, Inc., is a Pennsylvania
 4 Corporation having its principle place of business located at 1 Millenium Dr.,
 Uniontown, PA 15401.
 5

6 2. JURISDICTION

7 2.1 The Defendant regularly transacts business within the State of Washington.
 8 2.2 As a result of the Defendant's transactions within the State of Washington, this
 9 Court has personal jurisdiction over the Defendant under RCW 4.28.185(1)(a).
 10 2.3 The cause of action complained of herein includes allegations that commercial
 11 electronic messages sent by or on behalf of the Defendant to the Plaintiff violate
 12 RCW 19.190 et seq. and RCW 19.86 et seq. and includes a prayer for relief in
 13 excess of \$75,000, exclusive of interest and costs.
 14 2.4 This Court has original jurisdiction over the subject matter of this complaint
 15 under 28 U.S.C. § 1332 as it is a controversy between citizens of different
 16 states, it contains allegations that the Defendant's conduct violated RCW 19.86
 17 et seq. and RCW 19.190 et seq., and the amount in controversy exceeds
 \$75,000, exclusive of interest and costs.
 18

19 3. CAUSE OF ACTION

20 3.1 Plaintiff realleges Paragraphs 1.1 through 2.4 and incorporates them herein as if
 21 set forth in full.
 22 3.2 The Plaintiff is the registrant of the internet domain name "Gordonworks.com."
 23 3.3 At all times relevant to this action, the Plaintiff's status as a Washington
 24 resident is and was available, upon request, from the Plaintiff.
 25 3.4 The Plaintiff's status as a Washington resident and the Plaintiff's internet
 26 domain name "Gordonworks.com" has been and is registered, at all times

1 relevant to this complaint, with the Washington's Association of Internet
 2 Service Providers' (WAISP) database.

3.5 On or about September 2, 2003, the Defendant received a letter sent by Plaintiff
 4 by certified mail, return receipt requested, advising the Defendant that Plaintiff
 5 was a resident of the State of Washington, and that the Defendant was sending
 6 the Plaintiff commercial electronic mail messages to Plaintiff's domain
 7 "Gordonworks.com" which violated RCW 19.190 et seq. and RCW 19.86 et
 8 seq.

8.6 Despite this letter, the Defendant has continued to initiate the transmission,
 9 conspired with another to initiate the transmission, or assisted the transmission,
 10 of commercial electronic mail messages to the Plaintiff at Plaintiff's domain
 11 "Gordonworks.com."

12.7 In the time period subsequent to the Defendant's receipt of Plaintiff's letter on
 13 September 2, 2003, Plaintiff has received 1850 commercial electronic mail
 14 messages from the Defendant, or agents acting at the direction of and on behalf
 15 of the Defendant, at Plaintiff's domain, "Gordonworks.com."

16.8 The Defendant knew or consciously avoided knowing that the initiator of these
 17 commercial electronic mail messages was engaged in a practice that violates
 18 Washington State's consumer protection act, RCW 19.86.

19.9 All of the commercial electronic mail messages violate at least one prohibition
 20 of RCW 19.190.020 (1)(a) or (b) because each of the commercial electronic
 21 mail messages:

22.9.1 misrepresent or obscure information identifying the point of origin of the
 23 commercial electronic mail message, and/or

24.9.2 misrepresent or obscure information identifying the transmission path of the
 25 commercial electronic mail message, and/or

26.9.3 contain false or misleading information in the subject line of the commercial
 electronic mail message.

1 3.10 Pursuant to RCW 19.190.030 (1)(a) and (b), all of the commercial electronic
2 mail messages violate Washington State's consumer protection act, RCW 19.86,
3 because each of the commercial electronic mail messages:
4 3.10.1 misrepresent or obscure information identifying the point of origin of the
5 commercial electronic mail message, and/or
6 3.10.2 misrepresent or obscure information identifying the transmission path of the
7 commercial electronic mail message, and/or
8 3.10.3 contain false or misleading information in the subject line of the commercial
9 electronic mail message.
10 3.11 The Plaintiff fully expects that the Defendant, or the Defendant's agents acting
11 on behalf of and at the direction of the Defendant, will continue to send
12 commercial electronic mail messages to the Plaintiff throughout the period that
13 resolution of this complaint is pending, which will also violate at least one
14 prohibition of RCW 19.190.020 (1)(a) or (b) and constitute a per se violation of
15 RCW 19.86 under RCW 19.190.030 (1)(a) or (b).

16 4. PRAYER FOR RELIEF

17 4.1 Plaintiff, James S. Gordon, Jr., prays for relief as follows:

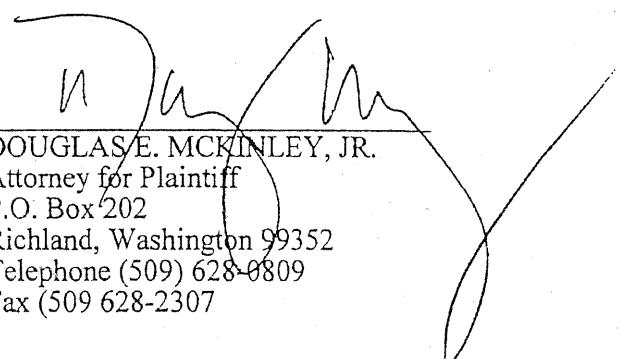
18 4.2 That the Court adjudge and decree that defendant has engaged, and continues to
19 engage, in the conduct complained of herein.

20 4.3 That the Court adjudge and decree that the conduct complained of in paragraphs
21 3.1 through 3.9.3, and paragraph 3.11, constitutes violations of the Commercial
22 Electronic Mail Statute, RCW 19.190.020.

23 4.4 That the Court adjudge and decree that the conduct complained of in paragraphs
24 3.1 through 3.11 constitutes violations of the Commercial Electronic Mail
25 Statute, RCW 19.190.030, and therefore a violation of the Consumer Protection
26 Act, RCW 19.86.

1 4.5 That the Court assess civil penalties, pursuant to 19.190.040(1) of five hundred
2 dollars (\$500) per violation against defendant for each and every one of the
3 violations of RCW 19.190.020 caused by the conduct complained of herein.
4 4.6 That the Court assess civil penalties, pursuant to RCW 19.86.140, of two
5 thousand dollars (\$2,000) for each and every one of the violations of RCW
6 19.86 caused by the conduct complained of herein.
7 4.7 That the Court enter judgment pursuant to RCW 19.86.140 providing that
8 Plaintiff has been injured by the conduct complained of herein, and ordering that
9 the Plaintiff recover from the defendant the costs of this action, including
reasonable attorney's fees.
10 4.8 That the Court order such other relief as it may deem just and proper to fully and
11 effectively remedy the effects of, and prevent future instances of, the conduct
12 complained of herein, or which may otherwise seem proper to the Court.
13
14
15

DATED this 20th day of May, 2004.

16
17 
18 DOUGLASE E. MCKINLEY, JR.
19 Attorney for Plaintiff
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The Honorable Alan A. McDonald

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JUL 25 2004

Randy Gainer

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR.,
an individual residing in
Benton County, Washington

NO. CV-04-5003-AAM

COMMONWEALTH MARKETING
GROUP, INC.,
a Pennsylvania Corporation

SECOND AMENDED
COMPLAINT

Defendant

JURY TRIAL REQUESTED

TO: CLERK OF COURT

AND TO: Randy Gainer

Davis Wright Tremaine LLP

2600 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688

COMES NOW, plaintiff, James S. Gordon, Jr., and brings this SECOND AMENDED COMPLAINT against defendant named herein. Plaintiff alleges the following on information and belief:

1. PARTIES

SECOND AMENDED COMPLAINT

DOUGLAS E. MCKINLEY, JR.
Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

1 1.1 Plaintiff James S. Gordon, Jr. is and was a resident of Benton County,
2 Washington during the time of all acts complained of herein.
3 1.2 Defendant Commonwealth Marketing Group, Inc., is a Pennsylvania
4 Corporation having its principle place of business located at 1 Millenium Dr.,
5 Uniontown, PA 15401.

6 2. JURISDICTION

7 2.1 The Defendant regularly transacts business within the State of Washington.
8 2.2 As a result of the Defendant's transactions within the State of Washington, this
9 Court has personal jurisdiction over the Defendant under RCW 4.28.185(1)(a).
10 2.3 The cause of action complained of herein includes allegations that commercial
11 electronic messages sent by or on behalf of the Defendant to the Plaintiff violate
12 RCW 19.190 et seq. and RCW 19.86 et seq. and includes a prayer for relief in
13 excess of \$75,000, exclusive of interest and costs.
14 2.4 This Court has original jurisdiction over the subject matter of this complaint
15 under 28 U.S.C. § 1332 as it is a controversy between citizens of different
16 states, it contains allegations that the Defendant's conduct violated RCW 19.86
17 et seq. and RCW 19.190 et seq., and the amount in controversy exceeds
\$75,000, exclusive of interest and costs.

18 3. CAUSE OF ACTION

19 3.1 Plaintiff realleges Paragraphs 1.1 through 2.4 and incorporates them herein as if
set forth in full.
20 3.2 The Plaintiff is the registrant of the internet domain name "Gordonworks.com."
21 3.3 At all times relevant to this action, the Plaintiff's status as a Washington
resident is and was available, upon request, from the Plaintiff.
22 3.4 The Plaintiff's status as a Washington resident and the Plaintiff's internet
domain name "Gordonworks.com" has been and is registered, at all times

26 SECOND AMENDED COMPLAINT

2

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Attorney At Law
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Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

1 relevant to this complaint, with the Washington's Association of Internet
2 Service Providers' (WAISP) database.

3 3.4.1 Plaintiff is an interactive computer service as that term is defined in RCW
4 19.190.010 (7)

5 3.5 On or about September 2, 2003, the Defendant received a letter sent by Plaintiff
6 by certified mail, return receipt requested, advising the Defendant that Plaintiff
7 was a resident of the State of Washington, and that the Defendant was sending
8 the Plaintiff commercial electronic mail messages to Plaintiff's domain
9 "Gordonworks.com" which violated RCW 19.190 et seq. and RCW 19.86 et
seq.

10 3.6 Despite this letter, the Defendant has continued to initiate the transmission,
11 conspired with another to initiate the transmission, or assisted the transmission,
12 of commercial electronic mail messages to the Plaintiff at Plaintiff's domain
13 "Gordonworks.com."

14 3.7 In the time period subsequent to the Defendant's receipt of Plaintiff's letter on
15 September 2, 2003, Plaintiff has received 1850 commercial electronic mail
16 messages from the Defendant, or agents acting at the direction of and on behalf
17 of the Defendant, at Plaintiff's domain, "Gordonworks.com."

18 3.8 The Defendant knew or consciously avoided knowing that the initiator of these
19 commercial electronic mail messages was engaged in a practice that violates
20 Washington State's consumer protection act, RCW 19.86.

21 3.9 All of the commercial electronic mail messages violate at least one prohibition
22 of RCW 19.190.020 (1)(a) or (b) because each of the commercial electronic
23 mail messages:

24 3.9.1 misrepresent or obscure information identifying the point of origin of the
25 commercial electronic mail message, and/or

3.9.2 misrepresent or obscure information identifying the transmission path of the
commercial electronic mail message, and/or

1 3.9.3 contain false or misleading information in the subject line of the commercial
2 electronic mail message.

3 3.10 Pursuant to RCW 19.190.030 (1)(a) and (b), all of the commercial electronic
4 mail messages violate Washington State's consumer protection act, RCW 19.86,
5 because each of the commercial electronic mail messages:

6 3.10.1 misrepresent or obscure information identifying the point of origin of the
7 commercial electronic mail message, and/or

8 3.10.2 misrepresent or obscure information identifying the transmission path of the
9 commercial electronic mail message, and/or

10 3.10.3 contain false or misleading information in the subject line of the commercial
11 electronic mail message.

12 3.11 The Plaintiff fully expects that the Defendant, or the Defendant's agents acting
13 on behalf of and at the direction of the Defendant, will continue to send
14 commercial electronic mail messages to the Plaintiff throughout the period that
15 resolution of this complaint is pending, which will also violate at least one
16 prohibition of RCW 19.190.020 (1)(a) or (b) and constitute a per se violation of
17 RCW 19.86 under RCW 19.190.030 (1)(a) or (b).

18 4. PRAAYER FOR RELIEF

19 4.1 Plaintiff, James S. Gordon, Jr., prays for relief as follows:

20 4.2 That the Court adjudge and decree that defendant has engaged, and continues to
21 engage, in the conduct complained of herein.

22 4.3 That the Court adjudge and decree that the conduct complained of in paragraphs
23 3.1 through 3.9.3, and paragraph 3.11, constitutes violations of the Commercial
24 Electronic Mail Statute, RCW 19.190.020.

25 4.4 That the Court adjudge and decree that the conduct complained of in paragraphs
26 3.1 through 3.11 constitutes violations of the Commercial Electronic Mail
Statute, RCW 19.190.030, and therefore a violation of the Consumer Protection
Act, RCW 19.86.

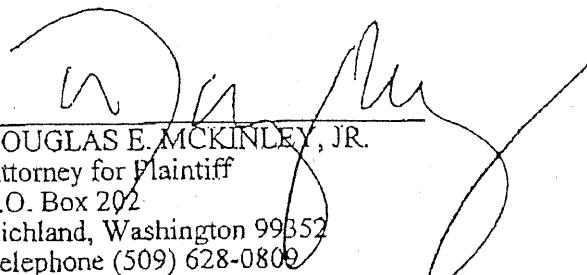
27 SECOND AMENDED COMPLAINT

28 4

29 DOUGLAS E. MCKINLEY, JR.
30 Attorney At Law
31 P.O. Box 202
32 Richland, Washington 99352
33 Phone 628-0809 Fax (509) 628-2307

1 4.5 That the Court assess civil penalties, pursuant to 19.190.040(1) of five hundred
2 dollars (\$500) per violation against defendant for each and every one of the
3 violations of RCW 19.190.020 caused by the conduct complained of herein.
4 4.5.1 That the Court assess civil penalties, pursuant to 19.190.040(1) of one thousand
5 dollars (\$1,000) per violation against defendant for each and every one of the
6 commercial electronic email messages sent through plaintiff's interactive
7 computer service in violation of RCW 19.190.020.
8 4.6 That the Court assess civil penalties, pursuant to RCW 19.86.140, of two
9 thousand dollars (\$2,000) for each and every one of the violations of RCW
10 19.86 caused by the conduct complained of herein.
11 4.7 That the Court enter judgment pursuant to RCW 19.86.140 providing that
12 Plaintiff has been injured by the conduct complained of herein, and ordering that
13 the Plaintiff recover from the defendant the costs of this action, including
14 reasonable attorney's fees.
15 4.8 That the Court order such other relief as it may deem just and proper to fully and
16 effectively remedy the effects of, and prevent future instances of, the conduct
17 complained of herein, or which may otherwise seem proper to the Court.
18

19 DATED this 25th day of July, 2004.

20 
21 DOUGLAS E. MCKINLEY, JR.
22 Attorney for Plaintiff
23 P.O. Box 202
24 Richland, Washington 99352
25 Telephone (509) 628-0809
26 Fax (509) 628-2307

27 SECOND AMENDED COMPLAINT

28 5

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Phone 628-0809 Fax (509) 628-2307

The Honorable Alan A. McDonald

RECEIVED

JUL 25 2004

Randy Gainer

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR.,
an individual residing in
Benton County, Washington.

NO. CV-04-5003-AAM

VS

CERTIFICATE OF SERVICE

COMMONWEALTH MARKETING
GROUP, INC.,
a Pennsylvania Corporation

JURY TRIAL REQUESTED

Defendant

TO: CLERK OF COURT

AND TO: Randy Gainer

Davis Wright Tremaine LLP

2600 Century Square - 1501 Fourth Avenue
Seattle, Washington 98101-1688

The undersigned hereby certifies and declares under penalty of perjury under the laws of the State of Washington that on July 25, 2004, he caused a copy of the following documents:

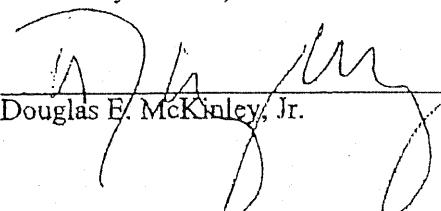
(1) Second Amended Complaint

CERTIFICATE OF SERVICE - 1

DOUGLAS F. MCKINLEY, JR.
Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2300

1 (2) Certificate Of Service
23 to be served upon the following party in the manner indicated:
4

5 Randy Gainer, attorney for Defendant Commonwealth Marketing Group, Inc.	(X) Via US Mail
6 Davis Wright Tremaine LLP 2600 Century Square - 1501 Fourth Avenue Seattle, Washington 98101-1688	() Via US Mail, Certified, Return Receipt Requested
	(X) Via Facsimile
	() Via Federal Express
	() Via Process Service

8 Executed at Richland, Washington this 25th day of June, 2004.
910 
11 Douglas E. McKinley, Jr.
12
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CERTIFICATE OF SERVICE - 2

DOUGLAS E. MCKINLEY, JR.
Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (309) 628-2307